

JOSEPH C. G. KENNEDY.

[To accompany Bill H. R. No. 512.]

MARCH 30, 1860.

Mr. MAYNARD, from the Committee on Claims, made the following

REPORT.

The Committee on Claims, to whom were referred the memorials of Joseph C. G. Kennedy, have had the same under consideration, and beg leave to report:

That they find the claim of Mr. Kennedy to consist of two separate and distinct items, the first being for compensation as secretary of the census board, and the other for rent and damages to certain buildings used by the government as the Census office. These claims have each been favorably reported from the committees of both houses of Congress; and fully concurring in the views expressed in these reports, which your committee herewith adopt, and believing the memorialist legally and equitably entitled to the relief prayed for, your committee report the accompanying bill, and recommend its passage.

IN THE SENATE OF THE UNITED STATES, *March 24, 1858.*

Mr. SIMMONS made the following report.—(To accompany bill S. 212.)

The Committee on Claims, to whom was referred the memorial of Joseph C. G. Kennedy, in relation to his compensation as superintending clerk of the census, report:

This claim was fully examined by the Senate Committee on Claims of the last Congress, and upon a review of the case this committee concur in the report then made, which is hereto annexed as a part of this report.

IN THE SENATE OF THE UNITED STATES, *January 20, 1857.*

Mr. GEYER made the following report.—(To accompany bill S. 510.)

The Committee on Claims, to whom was referred the memorial of Joseph C. G. Kennedy, report:

The census board was constituted by act of 3d March, 1849, with the power to appoint a secretary, but without fixing his compensation.—(9 Stat., 402.) Mr. Kennedy was appointed secretary. The 20th section of the act of May 23, 1850, authorized the allowance to the secretary of the census board of a salary of \$3,000 per annum “during the period he has been in their employ.”—(9 Stat., 432.) The 19th section of the same act provided for the appointment of a superintending clerk of the census, at a salary of \$2,500 per annum. This appointment was also conferred upon Mr. Kennedy, and accepted by him. But as the census board was not dissolved, and as he still continued to act as its secretary, he continued to claim the salary of \$3,000, which the Comptroller of the Treasury refused to allow, on the ground that the office of secretary of the census board was superseded by that of superintending clerk of the census.

In order to settle the question thus raised, the Secretary of the Interior addressed a communication to the census board, inquiring whether they regarded their labors as ended and their secretary discharged from his duties; to which the board responded that they did not consider the census board as dissolved, or Mr. Kennedy, its secretary, discharged from duty. This correspondence occurred in September, 1851, and would seem to show that Mr. Kennedy was still performing the duties of secretary of the census board, for at least sixteen months after his entering upon the duties of superintending clerk, and according to usage was entitled to the higher salary applicable to either of the two offices which he filled.

But in consequence of the continued objection of the Comptroller, the Secretary of the Interior in March, 1852, addressed a note to the chairman of the Senate Committee on the Judiciary, suggesting the introduction of a clause into the supplementary census bill, then pending, fixing the salary for the performance of both duties at \$3,000.

With a view, it is presumed, of accomplishing the object desired by the Secretary, a clause was introduced into the supplementary bill “that the twentieth section of the said act [of 23d May, 1850] be amended by striking out the words ‘has been’ from the last line, and inserting the words ‘may necessarily be’ in lieu thereof.” It will be perceived that the effect of this amendment was to provide for the payment of the salary of \$3,000 to the secretary of the census board *during the time he may necessarily be in their employ, instead of during the time he has been in their employ*, as provided in the original act.

At the commencement of the next session of Congress, it was represented to the chairman of the Judiciary Committee of the Senate that the above amendment of the act of 1850 might enable the memo-

rialist to claim and receive the two salaries of secretary of the census board and of superintending clerk, amounting to \$5,500 per annum. This led to the adoption of the joint resolution of 23d December, 1852, which had the effect not only to repeal the above amendment to the act of 1850, but to provide that the act should "be so construed that no allowance as compensation be made to any person for constructive or any other service rendered as secretary to the census board, after the first day of June, 1850."—(10 Stat., 260.)

In reference to this resolution Mr. Downs stated in the Senate, that Mr. Kennedy was "claiming nothing more than the salary of \$3,000, to which he is entitled, and to which he was entitled."—(Congesional Globe, vol. 24, part 3, p. 2226.) And Mr. Meade, of Va., in the House of Representatives, said: "As well as I can recollect, there was an error committed, by which the superintendent of the census might, by the strict letter of that bill, draw his pay both as clerk of the census board and superintendent of the census. When the Senate became aware of this mistake, they sent down to us this joint resolution for its correction. It gives the superintendent *the choice of being paid as clerk of the census board or superintendent of the census.*"

The construction given to the joint resolution by the accounting officers of the treasury is, that it limits the compensation of the memorialist, for all the duties performed by him in either or both capacities, to \$2,500 per annum from the 1st of June, 1850; and as he had already been paid at the rate of \$3,000 per annum, up to the time of the passage of the joint resolution, (December, 1852,) he has been officially called upon to refund to the treasury the \$500 per annum received over that sum. By the act of the 22d of April, 1854, after the memorialist had left the office, the salary was definitely fixed at \$3,000 a year.—(10 Stat., 276.)

In view of all the circumstances, the committee are of opinion that the sum ultimately fixed upon as a proper compensation for the duties of the office, namely, \$3,000 a year, is a reasonable one, and that the memorialist is fairly and equitably entitled to that rate of compensation; and they report a bill accordingly.

The committee report the accompanying bill and recommend its passage.

IN THE HOUSE OF REPRESENTATIVES, *March 26, 1858.*

Mr. J. C. KUNKEL, from the Committee on Claims, made the following report:

The Committee on Claims, to whom was referred the memorial of Joseph C. G. Kennedy, asking compensation for rent and damages to property, or the restoration of certain buildings used for government purposes to a good condition, having had the same under consideration, submit the following report:

It appears to the satisfaction of the committee that the Department of the Interior, for about the space of three years, occupied two build-

ings, the property of this petitioner. It also appears that the annual rent was fixed by the then mayor and postmaster of the city, both nominated for that purpose by the Secretary of the Interior, and that this petitioner was bound in advance to submit to such award as should be made by the persons to be appointed for that purpose by and on the part of the department. Neither in the instructions of the Secretary to the two gentlemen who established the amount of rent, nor in their award, is any allusion whatever made to damages, nor to any other subject, but the annual sum to be paid for the use of the property. It would appear, from the statements of both the referees, that the question of damages was not discussed or mentioned at the time of fixing the rent, while they have since individually expressed a difference of opinion as to the effect the uses to which the buildings were appropriated had upon their minds at the moment of determining the sum which they deemed just and proper for the government to pay. Nor does it appear that any contract was subsequently entered into between the department and the petitioner by which the department assumed the usual liability for damages, although the petitioner sets forth in his deposition accompanying his memorial that the Secretary of the Interior, at the time of the lease, and before fixing the amount of rent, agreed that the premises should be restored to a good condition when surrendered; and it would appear, from the letter of the Secretary, that he considered the department bound to restore the property of the petitioner "to the condition in which it was at the commencement of the lease," and in this respect confirming the truth of the petitioner's deposition.

The question of damage and liability seems, therefore, to the committee to depend mainly upon what has heretofore been the practice of the government, the law and custom of the place, and the character of the damages sustained. For the information of the House of Representatives, among other evidences respecting the practice of the government in the restoration of rented property to a good condition, the following may be referred to:

On the 28th December, 1841, the Post Office Department communicated the following information to the owner of the buildings rented for the use of the department, viz: "I have had the whole interior painted, every chamber and ceiling whitewashed, all the rooms which were originally papered have been papered anew, all the fire-places put in complete order," &c. The Postmaster General, on the 18th of January, 1842, writing on the subject, says: "I was and am of the opinion that the United States, in returning the buildings, was bound to repair that injury which was caused by their use, not that caused by the action of time upon the exterior of the building." In a lease made in 1836 by the Treasury Department with James Laurie, "the department holds itself bound to restore the house to the said James Laurie in the same order as when it was obtained from him." In a contract signed by Louis McLane, Secretary of the Treasury, April 6, 1833, occur these words: "Said premises to be returned in the same repair they were in when possession was granted to the United States, saving the usual wear and tear." In the contract between the Treasury Department and L. Sheppard, in October, 1834, occur these words:

"The department holds itself bound to restore the house to the said Sheppard in the same order as when it obtained it from him." And, coming down to a more recent date, it appears by the contract entered into on the 12th June, 1854, by the Department of the Interior, for the lease of the building on Seventh street, occupied by the Indian office, that the building was "to be left in as good state and condition as when the office took the same, damage by fire or other unavoidable accident excepted." In corroboration of the foregoing examples, we append a letter from John P. Pepper, esq., alderman of this city:

JANUARY 4, 1855.

SIR: In answer to the above inquiry, I may say that, during sixteen years' superintendency of the Treasury Department, it always was the custom of the government to have all buildings rented by the same, upon leaving, repaired and put in complete tenantable order.

JOHN P. PEPPER.

MR. JOSEPH C. G. KENNEDY.

As illustrative of the nature of this claim, the committee insert the deposition of the petitioner, and, in justification of the conclusion at which they have arrived, they submit all the material portions of evidence which have been brought to their attention, as follows:

Deposition of Joseph C. G. Kennedy.

Personally appeared before the subscriber, a justice of the peace in and for the city of Washington, Joseph C. G. Kennedy, who, being duly sworn according to law, deposeth as follow, viz: That he, the deponent, is owner of certain houses and ground in the city of Washington, lately occupied by the Department of the Interior for the space of about three years; that he became proprietor of the property with the knowledge and consent of the head of the department; that the annual rent was established by the *agents appointed by the department*; that he, the deponent, took no part in their selection, and used no means to influence their judgment in the decision; that they were appointed, and requested to *fix a just and equitable amount of rent*, and had *no authority to entertain the question of damages*; that it was not by him, or the Secretary of the Interior, understood that they had entertained the question of damages to the premises; that the Secretary informed him (Kennedy) that the department *would repair the premises* previous to their surrender. This deponent declares that the premises were abandoned by the government *without due legal notice*, and were occupied by the department *up to the moment of surrendering possession*. He further declares that the premises *were left in a filthy, damaged, and abused condition* by the department, so much so as to render them untenable, and of no use to him, the said Kennedy. He declares the rent to have been less than was previously paid, or is now paid by the government, and less than the Census office previously paid for rooms, which, when surrendered to their owners, were placed in repair at the expense of the government. He further declares that if the amount necessary to restore the premises to their

former condition was paid, the same would rent for an amount equal to that paid by the government. He further declares that the rent was *just and equitable*, and not any more than just and equitable, as he is prepared to prove by the present rate of rents in the immediate vicinity, apart from the declaration of the commissioners appointed to assess the rent of the premises referred to. He declares further, that no contract or lease was made with the department, because he relied on the faith of the department, and declarations of the Secretary to do justice; and he further declares, that if a lease had been consummated, the department would have contracted to leave the premises in a good condition and state of repair, such being the understanding of both parties, and the natural inference from the fact that the premises previously occupied for similar purposes were repaired at the expense of the department, and such was believed, and is still believed to have been the course and policy of the government.

This deponent declares his willingness to have his claim cancelled by the department restoring the premises to the condition in which they existed when rented by the government, and the payment of rent until such condition thereof shall be effected; or he will assent to receive the amount which an impartial commission will award, together with the rent up to the period of such award and payment, willing to lose the time necessary to effect the repairs.

JOS. C. G. KENNEDY.

Sworn and subscribed this 1st of March, 1854, before me.

SAM'L GRUBB, J. P. [SEAL]

In a communication made by the Secretary of the Interior to the Senate, on the 24th of August, 1852, (Ex. Doc. 111,) the following statement is found respecting the lease of the property in question:

"In reference to the principal building rented for the use of the Census office, it will be seen that there was a departure from the ordinary course of proceeding in making contracts of lease. It is usual, where houses are rented for the use of the government, to enter into agreements with the proprietors, without the intervention of third persons to ascertain the amount of rent to be paid. The reason of the departure in this case was, that Mr. Kennedy, the superintendent of the census, was interested in the property, and therefore, from motives of delicacy, declined entering into any negotiation in reference to the amount of the rent. As the house was a very large and commodious one, and the only one that could be obtained offering the same amount of accommodation and so conveniently situated, it was agreed between us that I should designate two gentlemen of undoubted respectability, and well acquainted with the value of property, to fix the rent. In accordance with this agreement, I named Mr. John W. Maury, the present mayor, and Mr. William A. Bradley, the postmaster of the city, both of whom have resided for many years in the city, and are well acquainted with the value of property. They examined the house and made the assessment at \$1,750 per annum, which is at the rate of \$75 for each room.

"A copy of the agreement between Mr. Selden, the holder of the

legal title to the house, and Mr. Kennedy, for the department, submitting the question of the amount of the rent to the arbitrament of Messrs. Maury and Bradley, and a copy of their award under that submission accompany the report of the superintendent."

The documents above referred to are the following, and were appended to the above report of the Secretary of the Interior:

Rent Contract.

It is agreed by and between William Selden, esq., of Washington, D. C., and Joseph C. G. Kennedy, on behalf of the Department of the Interior, for the Census office, that the terms of rent for the premises now in occupancy by the Census office, shall be established by two disinterested citizens of Washington, to be nominated by the Hon. Alex. H. H. Stuart, Secretary of the Interior; their decision shall be final and conclusive in the matter, and binding upon both parties. In case of non-agreement by the two persons named, they may select a third person to aid them in determining the matter.

WM. SELDEN.

JOS. C. G. KENNEDY.

WASHINGTON, *January 1, 1851.*

I hereby request Messrs. John W. Maury and Wm. A. Bradley to examine the premises referred to, and to fix a just and equitable amount of rent to be paid therefor, for the uses designated.

ALEX. H. H. STUART,

Secretary of the Interior.

Award of Messrs. Maury & Bradley.

In accordance with the foregoing agreement, and in consideration of the request of the Hon. Alexander H. H. Stuart, Secretary of the Interior, the undersigned establish the rent to be paid for the above described premises at seventeen hundred and fifty dollars per annum.

JOHN W. MAURY.

WILLIAM A. BRADLEY.

In proof of the amount and extent of damages incurred by the petitioner, the following testimony has been submitted:

WASHINGTON, *January 19, 1855.*

Having been requested by J. C. G. Kennedy, esq., former superintendent of census, to state my opinion as to what amount of money it would require to place the house rented by the United States of him or of Mr. Selden, in as good condition as it was when the United States rented the same, I would state that I do not believe that less than two thousand dollars would place the building in as good condition as when government took possession of it. I was chief clerk part of the time under Mr. Kennedy, and for a while chief clerk under Mr.

De Bow. In all alterations and fixtures for the accommodation of the immense quantity of matter in the shape of returns, &c., the preservation of the property was not considered, but the walls were perforated with nails for shelving, &c., the paper of the most costly character destroyed, and this once beautiful house (for the interior was very finely finished) was left, so far as the interior was concerned, a perfect wreck. With, at times, 75 clerks, holding situations of a very temporary character, it could not be expected they would be particular in preserving clean and in good order property they did not expect to occupy long; and at times some of them displayed the organ of destructiveness. I have no interest in this matter, and all I say I honestly believe.

JOHN S. HOLLINGSHEAD.

Sworn and subscribed before me.

B. K. MORSELL, *J. P.*

WASHINGTON, *June 10, 1856.*

SIR: Having a knowledge of the condition of your house before its occupancy by the Census bureau, and being called upon to ease some doors on account of the settling of the building while it was so occupied, I have no hesitancy in saying that the building could not be put in the same condition as it was before it was so occupied for a less sum than two thousand dollars.

Yours, respectfully,

JACKSON EDMONSTON.

JOS. C. G. KENNEDY, Esq.

WASHINGTON, *May 24, 1856.*

DEAR SIR: In reply to your question, what amount of expense it required to put the house on 8th street, now owned by Colonel Forney, in as good order as it was in before the house was occupied as the Census office? I state, that I was employed by Colonel Forney to do the carpenters' work. The house was in a very bad condition at that time; the ceilings cracked and broken by weight; ink on the floor and walls, and the paper on the walls ruined. I do not know what the bills amounted to to put the house in order, but suppose they must have been eighteen hundred dollars or more. Rent for two months ought to be allowed, as it required that amount of time to make the repairs, which is always allowed when buildings are to be left by agreement in like good order as when taken.

Very respectfully, yours,

CHARLES F. WOOD.

Mr. KENNEDY.

MAY 26, 1856.

My opinion being requested, I state, without reserve, that Mr. Charles F. Wood is one of our best master-carpenters and builders, and one of the most respectable citizens of Washington.

W. W. SEATON.

And also by the testimony of Mr. John W. Forney, who became the proprietor of the buildings while in the state in which they were left by the government, which reads as follows :

Personally appeared before me John W. Forney, esq., who, being duly sworn according to law, deposeth and saith : That he became proprietor of the buildings on 8th street, Washington, previously occupied by the Census office ; that the same were, when taken by him, in an untenantable and damaged condition, the walls being much cracked, the papering destroyed, and the wood-work much injured—the whole requiring a thorough renovation ; that to render the premises tenantable, and place them in a condition such as he deemed necessary for the comfort of his family, he expended over three thousand dollars.

JOHN W. FORNEY.

Sworn and subscribed this 19th day of January, 1855.

SAMUEL GRUBB, *J. P.*

The chairman of the Committee on Expenditures on the Public Buildings addressed a letter of inquiry to the Hon. Alex. H. H. Stuart, late Secretary of the Interior, requesting him to state how he understood the contract as it related to the buildings being left in as good tenantable condition as they were in when taken possession of by the government. To this inquiry your committee received the following reply, to wit :

STAUNTON, VA., *January 21, 1855.*

DEAR SIR : My recollection of the contract for the lease of Mr. Kennedy's house is, that the rent was to be ascertained by John W. Maury and William A. Bradley, and that for any injury done to the house, beyond the ordinary wear and tear, compensation should be made by restoring it to the condition in which it was at the commencement of the lease. At the time the contract was made it was not supposed that we would need the house very long, and but little injury was anticipated. I regarded the government as standing on the footing of any other tenant.

Very respectfully, your friend and obedient servant,

ALEX. H. H. STUART.

Hon. H. A. EDMUNDSON.

WASHINGTON, *December 29, 1853.*

SIR : I have Mr. Whiting's note of the day before yesterday, and in reply state that, on my part, the rent of \$1,750 per annum for the house on 8th street occupied by the Census office was agreed to in consideration of the time it was expected to be occupied by that office, which, I was informed, would probably not exceed eighteen months ; and of the fact that, as it was to be occupied as a public office, and subject to the wear and tear incident to such uses, the rent ought to

be sufficient to make the landlord a fair allowance for the use of his property, and to indemnify him for any expense he might have to incur to put the property in good condition at the end of the time.

The last assessment made of this property was in the year 1849. It was then valued at \$9,089; but there has been a considerable increase in the value of property in this city since then, and this cannot be taken as a fair estimate of its present value.

I am, very respectfully, yours,

JOHN W. MAURY.

Hon. R. McCLELLAND,
Secretary of the Interior.

WASHINGTON, December 30, 1853.

SIR: I have just received your communication of the 29th instant, and have to state in reply to your several inquiries in behalf of the Secretary of the Interior:

First. That the house on 8th street, recently occupied by the Census office, was sold by me on the 16th of November, 1850.

Second. That I sold it for \$10,000 to Joseph C. G. Kennedy, esq., late superintendent of the Census office, who informed me at the time that he acted only as agent for Mr. Howe, of Pittsburg.

On the written request of Mr. Howe, received through Mr. Kennedy, the deed was made and executed on the 4th of December, 1850, to Mr. William Selden, of the firm of Selden, Withers & Co., whose notes were given me for the postponed payments of the purchase money, \$8,000, with the understanding that they would be paid in sixty days, with the deduction of five per cent. from the face of the notes, or \$400, at which time they were so paid, and thus closed all my interest in the property.

Third. I am unable to state with certainty what I should have considered a fair rent on a lease of three or four years at the time I owned the property. I never offered it for rent, but I have understood that in this city ten per cent. gross revenue on the value is considered a fair rent; and at that rate, taking the price at which I sold the property, the rent would be \$1,000 per annum.

The frame office was rented at \$100 per annum to the late Dr. Jones, of the Patent Office, and other tenants after his decease.

I am, very respectfully, your obedient servant,

WM. T. STEIGER.

GEORGE C. WHITING, esq.,
Chief Clerk, Department of the Interior.

The house on 8th street, Washington, D. C., used as the Census office, conveyed by William T. Steiger to William Selden for \$10,000, \$400 off, November 16, 1850.

Same property conveyed by William Selden to Joseph C. G. Kennedy for \$10,000, April 8, 1854.

Same property conveyed by Joseph C. G. Kennedy to John W. Forney for \$13,500, April or May, 1854.

SUPREME COURT ROOM, MARSHAL'S OFFICE,
Washington, February 26, 1858.

DEAR SIR: In answer to your note of this day's date I have to state that, as agent for Colonel Forney, I rented his house on 8th street to Mr. Senator Trumbull, of Illinois, for the annual rent of \$800.

I am not aware that the house has been rented by any other person since it was purchased by Colonel Forney.

I am, sir, very respectfully,

J. D. HOOVER.

Hon. G. W. JONES,
House of Representatives.

DEPARTMENT OF THE INTERIOR, *August 16, 1853.*

SIR: I hereby notify you that the building on 8th street, in the city of Washington, now occupied by the "Seventh Census" as an office, under a lease or agreement made about November, 1850, and which said building was taken possession of as said office on the 1st day of December, 1850, at a yearly rental of \$1,750, as per appraisement of Messrs. J. W. Maury and William A. Bradley, &c., &c., will not be required on or after the first day of December, 1853, but will be surrendered to you at that period.

Very respectfully, your obedient servant,

R. McCLELLAND,
Secretary.

NOTE.—The above letter was delivered in person, by me, to Mr. Selden's son, at the bank of Selden, Withers & Co., his father being in the country at the time.

W. W. DENNISON,
Chief Clerk Census Office.

DEPARTMENT OF THE INTERIOR,
Census Office, January 8, 1854.

The petition of Joseph C. G. Kennedy to the President of the United States of the date December 24, 1853, herein enclosed and marked A, has been referred to this office for a report.

The petition avers, that a little more than two years ago I (the said Kennedy) leased to the Department of the Interior two buildings, &c., an averment in which there are no less than three distinct material errors: 1. It is a little more than *three* years, and not two years, since the lease was made. 2. The lease covered "premises embracing *one* building and its appendages," and not two buildings. 3. The lease was made in the name of William Selden, and not in that of Mr. Kennedy. (Herein find copy of the lease, marked "B.")

The petition again avers that "the proper legal notice for the rendition of the premises was not given, and that the key was not deliv-

ered on the last day of the term, but on the first of the succeeding." By reference to the facts as they appear in the opinion of the late district attorney, Mr. Fendall, the notice of surrender, the certificate of actual surrender, copies of which are enclosed and marked C, D and E, it will be perceived that all of this is totally unfounded.

Admitting, for argument, under the government, any precedents for the repair of buildings leased by it, such precedents could not be applicable to a case like the present, in which the amount of rent was settled by arbitrators, with all the facts before them of the character of proposed occupancy and the extent of probable deterioration, and when one of the two arbitrators distinctly says that these facts went in enhancement of rent. The letter of the said arbitrator, herein enclosed and marked F, will be sufficient on the point and will further negative the assertion of petition that "it was understood the premises would be left in the same perfect condition in which they were found."

In any case, however, of equities in matters of this kind, the petitioner, Joseph C. G. Kennedy, can be entitled to none from the government, since, by the statement of Mr. Clark, disbursing agent of the Department of the Interior, herein enclosed and marked "G," his accounts against the treasury have not been audited to the extent of \$2,398, and are therefore unsettled; and, by evidence on file in the Department of the Interior, he admits the possession of papers and documents belonging to the government, which have been improperly retained by him.

Respectfully submitted.

J. D. B. DE BOW,
Superintendent Census.

Hon. R. McCLELLAND,
Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
Washington, January 16, 1854.

MR. PRESIDENT: On the 27th ultimo you referred to me, for report, a communication addressed to you on the 24th by Mr. Joseph C. G. Kennedy, on the subject of certain premises recently occupied by the Census office.

As it appears from the records of this department, and from official reports made by Mr. Kennedy while he was the superintendent of the census, that the premises in question were the property of Mr. William Selden, of this city, to whom the rent has always been paid, and to whom the property was surrendered, the simple statement of the fact might with propriety be considered a sufficient reply to Mr. Kennedy's communication. But, as he has made the declaration that he is in fact the owner and lessor of the premises, I will, for your information, proceed to notice the statements made in his communication in the order in which they occur.

First. As to the period when the premises in question were leased to the United States, Mr. Kennedy states that it was "a little more than two years since;" but by reference to a report made by him on

the 12th February, 1852, as superintendent of the census, and to the accounts of the contingent expenses of the department, I find that the occupancy and rent of the premises commenced the first day of December, 1850, a little more than three years since.

Second. The manner in which the amount of rent to be paid was fixed is, it is believed, correctly stated by Mr. Kennedy, as I find on file in the department a copy of the agreement between himself—the *real owner*, as it now appears—acting on behalf of the department, and Mr. Selden, the nominal owner, but who really acted on behalf of Mr. Kennedy, binding themselves to abide the award of two disinterested citizens of Washington, to be nominated by the late Secretary, Mr. Stuart, on which paper is endorsed Mr. Stuart's appointment of Messrs. John W. Maury and William A. Bradley, and also their assessment of the rent at \$1,750 per annum.

Third. As to the condition of the lease, Mr. Kennedy states that, although no written lease was executed at the time, "it was understood" * * "by and between the contracting parties" * * * "that the premises would be left in the same perfect condition in which they were found, excepting, of course, such repairs as involves an entire renewal of injured portions, such as floors and stairs;" and that, "had a contract been entered into at the time, this would have been on the one hand required, and on the other freely conceded." It now appearing from Mr. Kennedy's own statements that he was in reality both lessor and lessee, and therefore the "contracting parties" alluded to, "by and between whom" the alleged conditions were "understood," I sought other and disinterested evidence of the condition of the lease, and made inquiry of Mr. Maury, one of the umpires. His written reply, of date the 29th ult., completely negatives the idea that the government was to make good any damages the premises might sustain. He says that, on his part, "the rent of \$1,750 per annum * * was agreed to in consideration of the time" the house "was expected to be occupied by that office, which," he "was informed, would not exceed eighteen months; and of the fact that, as it was to be occupied as a public office, and subject to the wear and tear incident to such uses, the rent ought to be sufficient to make the landlord a fair allowance for the use of his property, and to *indemnify him for any expense he might have to incur to put the property in good condition at the end of the term.*" That the alleged condition "would have been on the one hand required, and on the other freely conceded," had a contract been formally entered into, I am not prepared to deny, seeing that the contracting parties, the lessor and the lessee, were one and the same person.

Fourth. Mr. Kennedy says that the rent fixed upon amounted to "eleven per cent. upon the assessed value of the property." M. Maury informs me that the last assessment made of this property was in the year 1849, and that it was then valued at \$9,089. Mr. Steiger, the former owner of it, states that he sold the premises to Mr. Kennedy, as the alleged agent of Mr. Howe, of Pennsylvania, on the 16th of November, 1850, for \$10,000; that by the written request of Mr. Howe the deed was, on the 4th of December, 1850, executed to William Selden, who gave his notes for the deferred payments, (8,000,)

which notes, according to previous agreement, were paid at the expiration of sixty days, a deduction being made, at the rate of five per cent., amounting to \$400. So that the cash value of the property, as per actual cost to Mr. Kennedy, may be set down at \$9,600.

I am informed that a gross revenue of ten per cent. on real estate in this city is considered a fair rent, and as yielding a net income of six per cent.; four per cent. being generally sufficient to cover the expense of insurance, taxes, and repairs. \$1,750 per annum for the premises in question would pay an interest of over eighteen per cent. on the investment, and, admitting that property of this description in the use of the government is liable to greater damages than from private occupancy, the amount of rent paid in this case allows the application of three times the usual proportion for repairs, &c. During the three years the premises were occupied by the Census office, the United States paid as rent therefor the sum of..... \$5,250 more than half their original cost to the present owner.

Deduct therefrom six per cent. per annum on the investment	1,728
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and we have left.	3,522
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to cover extraordinary repairs, &c., a sum which will hardly be considered insufficient for that purpose.

Fifth. Mr. Kennedy objects that the proper legal notice for the surrender of the premises was not given, and that the key was not delivered on the last day of the term, but on the next day, being the first of the succeeding term. A written notice, addressed to William Selden, esq., was served on his son, at the banking house of Selden, Withers, & Co., on the 16th day of August last, that the premises would not be required by the government on or after the first day of December, 1853, and that they would be surrendered at that period. On these points I have only to say that the notice was given in accordance with the written opinion of the United States district attorney, Mr. Fendall, as to the length of time required by the laws of the District, and that the premises were vacated, and the key delivered to Mr. William Selden, on the 30th day of November, by the acting superintendent of the census, in presence of one of the clerks in that office.

Sixth. Mr. Kennedy complains that the condition of the property "renders it useless to the owner, who is unable to incur the expense of repairs," and requests that, "under these circumstances, you will direct the premises to be put in a good state of repair, or the expense thereof to be assessed and paid." Except during the last eight months of the time the property under consideration was in the occupancy of the Census office, Mr. Kennedy was the superintendent of the census, and had his office in that building, and whatever may be the extent of the damage the property has sustained, (of which I am not informed,) it was certainly his duty, not only to himself, but as a guardian of the public interests, to see that no *abuse* or unnecessary injury of the property was permitted. And I learn from one of the former owners that some of the deterioration now complained of, though to what extent is not precisely known, occurred prior to the sale of the property to him; but whether this be so or not, I think it

clear, in view of all the facts, that the United States are not liable for the damages claimed, either in law or equity, and that the owner's misapplication of the portion of the rent allowed by the umpires to make repairs at the end of the term, or his inability from any other cause to make the repairs, are matters with which the United States have no concern. On this subject Mr. Kennedy addressed a similar application to this department on the 29th of November last; but, being as well satisfied then as I am now that his claim was without just foundation, and feeling convinced of a want of fairness on his part towards the government in other respects, which I deem it unnecessary to the present inquiry to detail, I declined making any answer to the demand.

I have the honor to be, very respectfully, your obedient servant,
R. W. McCLELLAND,
Secretary.

To the PRESIDENT.

JANUARY 16, 1854.

The President approves of the within answer of the Secretary of the Interior, and of the conclusions at which he has arrived. The Secretary will cause a copy of the within, and a copy of this endorsement, to be forwarded to Mr. Kennedy.

F. P.

WASHINGTON, *January 20, 1854.*

SIR: I have the honor to acknowledge the receipt of your letter of the 16th instant, communicating a copy of your report on my application made to the President of the United States for damages occasioned to my property while in the occupancy of the government.

The remarkable character of your report demands notice—not that the opinion of one who manifestly pre-determines to illustrate practically the fable of the wolf and the lamb can be changed, but to place on record the reasons of my dissent from the arguments which have been urged to furnish a plausible pretext for your arbitrary and unjust decision. And first—taking the order and number of your positions as they are presented—I may say that the correction of my statement of the time during which the buildings were occupied, if it at all affects, only serves to strengthen the justice of my demand; for if, as you seem to contend, an increased amount was allowed as rent, in view of the damage expected to occur for a short period, the same should be increased when the premises were retained sufficiently long as to demand a thorough renovation to make them at all tenantable when surrendered; and as property and rents have advanced fully twenty per cent. in three years, in all parts of the city, my demand is, by your own showing, rendered the more forcible. Within the period of three years the rent for the premises I occupy as a dwelling has been raised *forty per cent.*; and one room, a square's distance from the Census office, which three years since would not rent for \$600 per annum, now produces a rent of \$1,000; and for property which

within three years was sold for \$9,000 the sum of \$15,000 has recently been offered and refused—the property being in the same condition as then, and only within half a square of that recently occupied by the Census office. I refer to the house on the southwest corner of Eighth and E streets.

As you refer to damage which may have occurred under a former landlord, it may be stated that I made no application for damages existing prior to its occupancy by the Census office, or my ownership. As having a bearing upon the condition of the property at the time it was taken for the purposes of the government, I will quote from an advertisement of Mr. Steiger in the "National Intelligencer" of the 12th November, 1850, which was as follows: "The house contains, including the back building, twenty-five large and conveniently arranged rooms, with wide passages running through the whole house. There is also an office on the south part of the lot, 12 by 26 feet, with two good rooms. The buildings were erected in 1842 by the best mechanics, and of the best materials, and repainted throughout in 1848." With respect to your discovery that I am the "real owner, as it now appears," while indifferent as I am to whom the damage is paid, I am free to assert that it has been known to every person connected with the department that I claimed an interest in the property. As the office required larger accommodations, and as no suitable building could be rented, these buildings were purchased with the knowledge and approbation of the Secretary of the Interior for this purpose; and as Mr. Selden advanced the money for their purchase, the title was made to him to secure the repayment of the same. I was the superintending clerk of the census, and, in that capacity, controlled solely by my official obligations, and with indifference to my pecuniary interests, placed them at the mercy of a commission, in the choice of which I took no part, willing to forego the right, in such cases always conceded, to name an umpire, should disagreement between the referees appointed by the department make it necessary to call in a third person.

Not only did I forego all participation in the selection of the commissioners appointed to establish the amount of rent, but, in view of my contingent interest in the property, I requested the Secretary of the Interior to *avoid the appointment of any one with whom my social relations were at all intimate*. Under these circumstances, does the insinuation that I acted as one interested in the award come with a good grace from the head of the department; and is my conduct amenable to the contemptuous sneer reiterated at the close of your next paragraph respecting "that the contracting parties were one and the same persons?"

Third. Inasmuch as it is foreign to my desire to be misrepresented in the use of words as I am in principle, I must protest against being quoted as using the expression "would of been," as I used no such language. If to obtain the whole truth from those *cognizant of all the facts* was your object, why did you not, when my application was pending, and he was in the city, apply for information to the late Secretary of the Interior? Why unless *ex parte* testimony alone was desired, not address a note to the commission which established the rent jointly?

Is it customary to consult privately "one of the umpires," as you term him, a member of such a board, and to address to him, and *him alone*, written inquiries to elicit information respecting the action and motives of a *joint* commission? These questions are not proposed on imaginary grounds, and to your own reflections they are submitted. The repetition for the third time of the insinuation respecting the "oneness of lessor and lessee," I repel, as conveying a known misrepresentation of facts. Did not the Secretary of the Interior, your predecessor in office, by the agents of his own selection, establish the amount of rent which was to be paid? Did I participate directly or indirectly, in fixing the same? Was not the rent paid by the disbursing officer of your department, and were not his accounts approved by you? Did not the arrangement bind me, Mr. Selden, and the department to abide by the award, which, without our mutual assent, might have been evaded? If so, how can I be "the lessor and lessee?"

Had the records of the department been examined with half the energy manifested to secure adverse testimony and throw the appearance of unfairness over the transaction, it would have been discovered, in a communication transmitted by your predecessor to the United States Senate, that not only was he perfectly familiar with the details respecting which you so mystically allude, but that I, in a letter to him, communicated to that body, unnecessarily and without restraint freely alluded to the interest of which I was possessed in the property, one never concealed. If the frequent use of these allusions is intended to impute to me any hidden or covert design for the purpose of obtaining a high or unfair amount of rent, or that the arrangement was to effect any personal advantage, I declare it an attempt on the part of the department to affect by insinuation what the facts do not warrant, and that efforts are made to give the appearance of propriety to conclusions which the facts do not justify, and which cannot be sustained. With respect to the labored calculations of profit and loss, which are so studiously figured, they have no bearing upon the merits of the case, and whether I made a good or a bad bargain cannot affect the principle involved. The rent was the lowest paid by the government—less than had been paid previously by the office for rooms, which, when surrendered, were repaired at the expense of the department. I deem, therefore, the hunting up of testimony concerning the first cost of the property, and the calculations of profit and loss, as appeals designed to affect the appearance of justice—a sort of argument resorted to by those who have not the manliness to deny their obligations, but resort to subterfuge to evade them. The "discount of five per cent." on the interest-bearing notes of William Selden, esq., proves the value of money at the time of purchase, and it would have quadrupled before this had the amount been invested in vacant lots.

Regarding the fifth point urged, I will only say that the legal advice of the district attorney must have been elicited upon a supposed case, and on principles inapplicable to the present, for I can hardly attribute to him such an opinion to apply to premises rented for an *indefinite period at an annual amount*. If the terms of this contract are observed, it will appear that the premises are not rented annually, but *indefinitely*, terms involving a notice of six months from either party by the

laws of Maryland, and I am not aware of any "laws of the District" which cover the case. If there exist such laws, the decisions of the courts appear to have been at variance therewith. But apart from this, your notice conveys an intimation of your intention to surrender the property on or after the first of December, and it is declared that the premises "will be surrendered at that period;" of this you give a notice of three and a half months, making the department liable for another year's rent, for which I was unwilling to contend if the proper repairs were made. The delivery of the key on the previous evening cannot make the notice, otherwise defective, a good one, as the courts have laid down the rule which permits the lessor to receive possession of the property abandoned by the lessee, while the latter remains bound as fully by the obligations of the contract as if he occupied the premises, and in addition liable for any damage which may be occasioned by the abandonment, and I feel assured that Congress will sustain the justice of such decision.

Sixth. As respects the sixth point which would hold me personally responsible for damages incurred by the use of the property by the department: The property, while in my care as an officer of the government, was protected from all "abuse or injury," as well as *misuse*, which is more than I can say for it under the care of him who succeeded me by your directions, who converted the apartments into sleeping rooms for your clerks, and occasioned violent and unnecessary abuse when abandoning the premises, as may be made apparent to the most indifferent observer. What would be your condition if made personally responsible for the buildings in your charge? Your own admission respecting the damage "allowed by the umpires" for the short period for which it was supposed the property would be occupied would justify an increase of the amount of compensation therefor with its increase, inasmuch as the rent here remained stationary, while elsewhere it has greatly advanced. Touching the groundless plea that my "want of fairness to the government in other respects" justifies the withholding from me my dues, the same has been plead before, upon equally frivolous pretence. It were better that you strike at once a balance of this unfairness, and let it be applied to some one case, and save the necessity of reference thereto on all occasions. But were the charge *true*, it is no good plea in mitigation of the injustice perpetrated, or any apology for that want of respect to my communication, to which a reply could only be obtained by the interposition of the President.

In all my relations with the government I have been most free and confiding to those who had any business to be informed respecting my acts; with such I have had no concealments; their confidence I have never forfeited, nor their friendship lost, and I have no reason to doubt that the two former administrations were guided by as pure, sagacious, and penetrating men as grace the departments of the government now, and their confidence is as valuable and highly prized as the absence of it in those constitutionally prone to suspicion is to me indifferent. Those who spread abroad ambiguous charges and groundless inuendoes may enjoy all the satisfaction to be derived therefrom, as others have heretofore done by me unnoticed, and without interruption. Toward

the government, my action has been bold and undisguised where I imagined myself wronged, as your department can attest, while direct charges from responsible sources have not been evaded.

During the last Congress, when a member ventured upon the responsibility of statements of injurious tendency, I applied, without the least hesitation, for the appointment of a committee of investigation, proffering my readiness, "without delay," to appear before such committee, pledging the return of "*my entire salary*" if I should not be pronounced "free from any and every charge" which could affect "the public or private character" of an officer of the government. Is it proper, then, for you now to anticipate that period with groundless aspersions? Where the lawful attainments of my rights, without humiliation, is impossible, I submit patiently to the oppression in the firm assurance that retributive justice will overtake the oppressor. I would like to be informed what you mean by this "unfairness toward the government in other respects," for I wish it to be distinctly understood that, as heretofore, I have never shunned investigation, I have now no claim to the exercise of any forbearance on the part of the government, and would spurn the idea of immunity from responsibility or obligation for any remission in the powers that be, much preferring a bold and manly charge directly made, to those insidious imputations which, from their indirectness, cannot be met, but which are made the more effectual by the affected appearance of a desire to throw the mantle of charity over imagined faults.

These are matters foreign to the subject, but their introduction is not chargeable to me. And now, what is the position of parties, and where should justice be done? Your predecessors in office, and you have occupied my property. By the agents of your own selection the rent had been established. No allusion was made to, nor provision made for, the damages to accrue; nor was the commission authorized to assess them upon the presumption that when the contract or lease should be executed, that could be arranged by the parties. Your predecessor declared, verbally, that the premises should be left in as good state of repair as when taken by the department, as had ever been the usage of government. You were permitted to retain the property at its first rent, until you abandoned it, without due legal notice, in a filthy and abused condition. You deferred reply to my respectful memorial asking for damages, thereby keeping me in suspense, and the premises unoccupied, and that when, as it now appears, you were at the time "as well satisfied as now." While your previous course had led me to anticipate your declaration that "the United States are not liable for the damages," and that these are "matters in which the United States have no concern," I deemed it a duty to elicit your opinion, that I might appeal therefrom to a higher tribunal—a course your ingenuity has defeated by the presentation of an *ex parte* report to the President, whose approval you have secured without any opportunity to me for a reply—a stratagem, in the success of which you will doubtless experience as much satisfaction as so magnanimous an act can impart. No doubt can exist respecting the truth of the concluding assertion that you "were as well satisfied" on the 29th of November "as now," that no compensation should be allowed for damages,

although it would appear that all the testimony upon which you rely to justify such a conclusion has been obtained since that period, and in a spirit confirming the truth of the illustration with which this letter begins.

To the propriety of the decision of his excellency the President I do not, under the circumstances, object, while I must record my thanks to him for requiring the consideration of my application.

I have the honor to be your obedient servant,

JOS. C. G. KENNEDY.

Hon. ROBERT McCLELLAND,

Secretary of the Department of the Interior.

A.

WASHINGTON, December 24, 1853.

More than two years since I leased to the Department of the Interior two buildings on Eighth street, between E and F. The amount of the rent was to be settled by a *dispassionate umpire*. I refused to name either of the persons to assess the rent, but requested the Secretary of the Interior to appoint no personal friend of mine for that purpose. Without my knowledge, advice, or consent, he appointed Hon. John W. Maury and W. A. Bradley. Neither I nor any friend of mine, nor any other person to my knowledge, approached either party with suggestions respecting the amount to be paid. I had a very slight acquaintance with Mr. Bradley. Mr. Maury was introduced to me after he received the notification of the Secretary, and at the moment he came to the premises with Mr. Bradley to determine the rent, which was fixed at \$1,750, or eleven per cent. upon the assessed value of the property, which contains twenty rooms, which was occupied by an average of fifty persons, and from twenty to thirty tons of materials. It was understood, although no written contract was ever entered into with the department, that the premises would be left in the same perfect condition in which they were found, excepting, of course, such repairs as involved an entire removal of injured portions, such as floors and stairs. *Had a contract been entered into at the time, this would have been, on the one hand, required, and on the other freely conceded. It was understood by and between the contracting parties, and involves a principle which has heretofore governed the departments of the government.* The rooms (on the upper floor) previously occupied cost \$125 per annum each. They were left in perfect repair at the cost of the department, and under the instructions of the Secretary.

The proper legal notice was not given for the rendition of the premises, involving, by the law of Maryland, another year's rent. The key was not delivered until the evening of the last day of the term, or on the first day of that succeeding. The premises were occupied until the last day, affording no time for repairs, except after the property was thrown upon the hands of the proprietor. Its condition renders it useless to the owner, who is unable to incur the expense of repairs. Under these circumstances, I have the honor to request his

excellency the President of the United States that he will direct the premises to be put in a good state of repair, or the expense thereof to be assessed and paid.

His humble and obedient servant,

JOSEPH C. G. KENNEDY.

WASHINGTON CITY, *February 7, 1857.*

DEAR SIR: In reply to your favor of the 6th instant, I have pleasure in saying that, when acting as one of the appraisers of the rent value of your property on Eighth street, I considered the rent fixed by Mr. Maury and myself as a fair one, for its use for ordinary purposes, and did not mean it should cover any excessive or unusual damages, which, it appears from Mr. Forney's statement, exceeded the whole rent paid for more than eighteen months.

Yours, very respectfully,

W. A. BRADLEY.

JOSEPH C. G. KENNEDY, Esq.

It therefore is evident that the buildings of this petitioner were occupied by the government up to the time of surrendering them. That they were greatly damaged admits of no denial; that he made application to the Secretary of the Interior before the surrender of the property for the repair of damages and their assessment as a matter of record, and, failing to obtain the relief desired, he appeals to Congress. The claim has been twice favorably acted on in committees of the House, and two bills have been reported giving \$2,000 to this petitioner; but as your committee find difficulty in ascertaining certain facts and the amount involved, they beg leave to submit the accompanying bill.

